

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1332 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

KANUBHAI M PATEL

Versus

STATE OF GUJARAT

Appearance:

MR MC BAROT for Petitioner

Mr. U.R. Bhatt AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 30/04/98

ORAL JUDGEMENT

On 15th October 1997 the Police Commissioner for the city of Ahmedabad passed the order of detention invoking his powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act (for short 'the Act'), pursuant to which the petitioner is arrested and at present kept under detention. By this application under Article 226 of the Constitution of India, the petitioner challenges the legality and validity of the detention order.

2. Against the petitioner, with Bapunagar and Odhav police stations about 5 complaints came to be lodged. In all the complaints it is alleged that the petitioner committed the theft of scooters and different types of

two wheelers. As the offences of theft of the vehicles were being committed in succession the people were feeling aghast and the tempo of the public life was being disturbed. The Police Commissioner therefore studied the case papers. He could see that the petitioner was by his criminal activities committing several wrongs and was terrorising the people. He used to extort money committing theft of different articles and valuable goods and give threat putting in fear of instant death and grievous hurt. He used the people to bend to his way and those who refused were brutally beaten. No one was therefore willing to come forward and lodge the complaint against the petitioner. The Police Commissioner preferred to have the statements of some of the persons but no one was willing to give the statement because of fear of violence. After considerable persuasion and that too when the assurance was given that the particulars disclosing their identity would not be disclosed some of the persons showed their willingness to give statement. After the statements were recorded, the Police Commissioner found that the anti-social activities of the petitioner shattering and battering the public life were going berserk and every one was feeling insecure. Immediate action was necessary, but after cogitation he also realised that any action under general law if taken would be the futile exercise. The only way out was to pass the order of detention under the Act and detain the petitioner. Consequently, the order came to be passed and at present the petitioner is kept under detention.

3. The petitioner has challenged the order of detention on several grounds, but at the time of submission, his learned advocate tapered off his submissions confining to the only submission namely exercise of privilege by the authority passing the order of detention. According to him, the privilege exercised is not just and proper. The particulars about the witnesses ought to have been given so as to represent before the authority that the statements recorded are not reliable. For want of particulars, effective representation could not be made and petitioner's right was impaired. The continued detention is therefore illegal and on that count this application is required to be allowed.

4. Mr. U.R. Bhatt, learned APP in reply to such submission submitted that keeping in mind the retaliatory tendency of the petitioner and to protect the lives of the witnesses, the authority thought it wise after careful consideration of the papers to exercise the discretion not to disclose the particulars about the

witnesses and when in such way in the public interest the particulars are withheld, exercise of discretion cannot be held to be unjust.

5. It would be better if the law about the non-disclosure of certain facts is elucidated. Reading Article 22(5) of the Constitution of India, what becomes clear is that the grounds on which order of detention is passed are required to be communicated to the detenu. The detenu is, therefore, required to be informed not merely factual inference and factual material which led to inference namely not to disclose certain facts but also the sources from which the factual material is gathered. The disclosure of sources can enable the detenu to draw the attention of the detaining authority in the course of his representation to the fact whether the factual material collected from such sources would be relied upon and used against him on the facts and circumstances of the case. Subject to the limitation mentioned in Article 22(6) of the Constitution of India and Section 9(2) of the Act, the detaining authority is of course empowered to withhold such facts and particulars, the disclosure of which he considers to be against the public interest. The privilege of non-disclosure has to be exercised sparingly and in those cases, where public interest dictating non-disclosure overrides the public interest requiring disclosure. Hence the detaining authority must be fully satisfied on the basis of overall study that the apprehension expressed by the informant is honest, genuine and reasonable in the circumstances of the case. With a view to satisfy itself whether the fear of violence and consequential feelings of insecurity or apprehension of a wrong would be done to them at any time by the detenu by those making statement against the detenu is imaginary or fanciful; or an empty excuse or well-founded for disclosing or not disclosing certain facts or particulars of those persons, the authority making the order has to make necessary inquiry applying his mind. What can be deduced from such constitutional as well as legal scheme whereunder obligation to furnish the grounds and the duty to consider whether the disclosure of any facts involved therein is against public interest are both vested in the detaining authority and not in any other. The authority passing the order of detention has to apply his mind and should itself be satisfied to the question whether or not the supply of the relevant particulars and materials would be injurious to the public interest. If the task of recording statements and necessary inquiry is entrusted to others, and if he mechanically endorses or accepts the recommendation of others or subordinate

authority in that behalf without applying mind and taking his own decision, the exercise of power would be vitiated as arbitrary. What is further required is that the detaining authority must file his affidavit to satisfy the court that he had sincerely and honestly applied the mind for the bonafide exercise of the powers about disclosure and privilege regarding non-disclosure so that the court can examine rational connection between the ground disclosed or not disclosed in public interest. If no affidavit explaining the exercise of the power is filed, the court can infer against the detaining authority. If the affidavit is filed explaining the exercise of the power, the detenu may challenge the privilege exercised on the ground that the same is vitiated by factual or legal malafides. For my such view, a reference of a decision in the case of Bai Amina, W/o. Ibrahim Abdul Rahim Alla Vs. State of Gujarat and others- 22 G.L.R. 1186 held to be the good law by the Full Bench of this Court in the case of Chandrakant N. Patel Vs. State of Gujarat & Others 35(1) [1994(1)] G.L.R. 761, may be made.

6. In view of such law, the authority passing the order has to satisfy the court that it was absolutely necessary in the public interest to withhold the particulars filing the explanatory affidavit. No such affidavit is filed. Hence it can be said that without any just cause the privilege is exercised. The particulars suppressed ought to have been given. What appears reading the copy of the order filed in this application is that the authority passing the order entrusted the task of enquiry as to whether fear expressed by the witnesses was bonafide and honest or a sheer imaginary and empty excuse and relied upon the report made to him because of the trust he was having in that officer. He has therefore mechanically accepted the report putting the endorsement. His subjective satisfaction without application of mind is therefore vitiated. Consequently, the continued detention is required to be held illegal and unconstitutional.

7. For the aforesaid reasons, the application is allowed. The order of detention dated 15th October 1997 is hereby quashed and set aside. The petitioner is ordered to be set at liberty forthwith if not required in any other case. Rule accordingly made absolute. D.S. is permitted.

.....
(rmr).